



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Wiggin-Torgerson Partnership

File: B-240889

Date: January 2, 1991

Mike Torgerson and Tom Wiggin for the protester. Allen W. Smith, Department of Agriculture, for the agency. Jacqueline Maeder, Esq., Paul Lieberman, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency did not reasonably determine that awardee's proposal for the lease of office space was technically acceptable where the awardee failed to submit with its proposal a required plot plan drawn to scale, and the record suggests that the awardee's office building including landscaping and parking actually does not fit within the proposed site without the use of additional land contiguous to the building site.

DECISION

Wiggin-Torgerson Partnership protests the award of a contract to Mountain States Leasing under request for proposals (RFP) No. R1-90-10, issued by the Forest Service, Department of Agriculture, for the leasing of office space in Superior, Montana. Wiggin-Torgerson contends that the Forest Service improperly evaluated proposals and improperly awarded to a higher-priced offeror whose proposal did not comply with the solicitation requirements.

We sustain the protest.

The RFP provided for the award of a fixed-price contract for the lease of 7,970 square feet of usable office space for a period of 5 years with three 5-year renewal options. The RFP contained building requirements and specifications, which included design considerations, site, landscaping, parking and access requirements, among others. For example, as to design, the building was to be one or two stories in height, use natural materials in the finishes, and have windows to allow natural light into interior spaces. The facility was to be appropriate for the neighborhood, communicate a professional Forest Service image and convey an understanding and

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respect for forestry/timber through the use of well-designed and crafted wood details.

The site was required to accommodate the building needs and allow space for parking, driveways, and landscaping, and to be situated in an area zoned for land use consistent and compatible with the project. A minimum of 14 parking spaces, 2 for use by the physically handicapped, were required, along with landscaping, including an area for a picnic table. The RFP required each offeror to submit as part of its proposal reproducible drawings of plot, elevation and floor plans drawn to scale. The RFP identified two acceptable site zones in Superior but indicated that other sites were not precluded from consideration if they met the site criteria.

The RFP provided for award to the offeror whose technically acceptable proposal provided the technical/cost relationship most advantageous to the government. The five technical evaluation factors, listed in descending order of importance, were accessibility and location, proximity to an existing government-owned warehouse and service center, suitability of design, energy conservation, and environmental factors and safety.

Three offerors submitted initial proposals which included 9 different potential sites. The agency conducted discussions with all offerors and requested all three to revise their proposals and to submit best and final offers (BAFOs). BAFOs were timely received from only Wiggin-Torgerson and Mountain States. Wiggin-Torgerson offered one building design on three different sites with one alternative design for one of the sites. Mountain States offered two building designs on three different sites with one alternative design for one of the sites. After evaluation, the agency made award to Mountain States on August 10, 1990, for its one-story office design at a site located at 301 Main Street. Wiggin-Torgerson filed its protest with our Office on August 23. Performance has been stayed pending the resolution of this protest.

Wiggin-Torgerson alleges that the Forest Service improperly accepted the Mountain States proposal, which did not include the reproducible, scaled plot plan required by the RFP. The protester argues that had the required plot plan for this site been submitted, it would have been obvious that the building proposed by the awardee, with the required parking and landscaping, cannot be constructed on the 301 Main Street site. In support of this contention the protester has submitted a scaled plot plan for the awardee's design at that site. Wiggin-Torgerson says that the awardee's "plot plan" which the agency claims to have used in its evaluation is not a plot plan at all but a rough sketch which incorrectly indicates that the size of the site is 150 feet by 150 feet.

Wiggin-Torgerson contends the site is actually 150 feet by 142 feet and, given these dimensions, the selected building design, with the required parking and landscaping, will not fit within the site boundary.

The determination of the relative merit of technical proposals is primarily a matter of administrative discretion which we will not disturb unless the record shows that it is unreasonable or not in accordance with the evaluation criteria. Ferranti Int'l Defense Sys., Inc., B-237555, Feb. 27, 1990, 90-1 CPD ¶ 239. For the reasons stated below, we conclude that the agency's evaluation of Mountain States' proposal for the selected 301 Main Street site as technically acceptable was not reasonable.

The awardee did not submit a plot plan drawn to scale for the site as required by the RFP, even though during discussions the agency pointed out that it was difficult to ascertain whether the 301 Main Street site adequately met the government's needs because Mountain States had failed to provide any plot plans for this site in its initial offer. The record suggests that Mountain States was unable to have its architect prepare the necessary site plan in time to submit with its BAFO. Instead, it provided a diagram that is, as the protester correctly asserts, merely a free-hand sketch which does not indicate dimensions, is not drawn to scale, and reflects a rectangular building design which is substantially different from the T-shaped building which the awardee proposed. As noted above, the protester, who was familiar with the site because it too had offered to build on it, submitted as part of its protest a scaled plot plan of the awardee's proposed building which indicates that the awardee's building and parking lot will not fit on the selected site. In particular, the Wiggin-Torgerson plot plan for the site and its accompanying narrative suggest that there is no substantial space for landscaping and that the required parking area will overlap the street right-of-way by 17 feet. The agency report indicates that the evaluation team determined only that "[c]alculations were made to check building would fit on site." In this regard, the team refers to a site plan "submitted previously"--in what context is unexplained--but which is not contained in the agency's bid protest report and was not a part of Mountain States' offer.

This solicitation specifically required all offerors such as the protester and the awardee who intended to satisfy the government's requirements through new construction to submit with their proposals a plot plan, drawn to scale, showing all proposed improvements to the property including landscaping. The information which such a drawing would contain appears directly relevant to a number of the solicitation's evaluation criteria which are concerned with the suitability of the site

and the proposed design, including such considerations as parking, traffic flow and landscaping. A plot plan would seem to be of particular value with respect to a site such as that at 301 Main Street which, because of its relatively small size, would require careful planning in order to accommodate all the agency's requirements.

Here, Mountain States never submitted with its proposal the detailed, drawn-to-scale plot plan the solicitation required. It submitted a handwritten rough sketch, with no scale indicated, depicting a rectangular building at the rear of the site. To one side and in front of the building was written "Landscape Area"; also in front of the building was written "Visitor Parking."

Although the record indicates that the agency's evaluators made calculations to check that the awardee's proposed building would fit on the site, and that they noted that the required 14 parking spaces were to be provided, the record does not evidence that the evaluators specifically considered whether the building, and the required landscaping and parking, all would fit on the site. As a result, the agency had no reasonable basis for its conclusion that the Mountain States proposal for the 301 Main Street site was technically acceptable.

In this regard, we found persuasive the scaled plot plan submitted by the protester in which, using the dimensions of the building as actually proposed by the awardee and siting the building at the rear of the lot as did the awardee, it is shown that not all features such as earthen berms, landscaping and parking will fit on the site. In particular, the protester contends that its scaled plot plan shows that the required parking area overlaps the street right of way.

Information subsequently provided to our Office by the Forest Service corroborates the protester's contentions. Because the agency report appeared incomplete, our Office requested that the agency provide all available information regarding the proposed sites and plot plans, and a copy of the full technical evaluation. The supplemental information did not suggest that the awardee's proposal reasonably established that parking and landscaping would fit on the site. To the contrary, information provided by the agency indicates that agency personnel held post-BAFO discussions with the awardee to obtain information as to how the proposed design, with the required parking and landscaping, could be made to fit on the selected site. The agency concedes that the actual plot dimensions are 150 feet by 142 feet but states that the awarded contractor has indicated there is additional land available for landscaping or parking that is a boulevard area which the city council has approved for use for these items.

Based on the awardee's informal representations, the agency believes that the availability of space on the site will be 178 feet by 163 feet. Clearly, the feasibility of Mountain States' design at the 301 Main Street site is dependent on the utilization of additional land not shown in the proposal it submitted and on which the award decision was based, and there is nothing in the record which establishes that this additional area is actually available to the awardee.

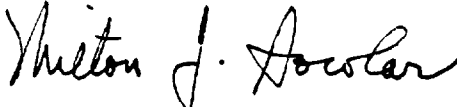
Wiggin-Torgerson also raises a number of other issues concerning the technical evaluation of proposals, including that the Forest Service did not follow the criteria specified in the solicitation; that the deficiencies in its design cited by the Forest Service were in areas not listed in the solicitation; and that the Forest Service's decision to award to the higher-priced offeror was improper.

Our review of the evaluation documents shows that the Forest Service's evaluation of proposals was based on the stated evaluation criteria. For example, Wiggin-Torgerson alleges that the importance of accessibility and location, the most critical evaluation factor, was either ignored or not weighed appropriately in the evaluation of offers. However, the summary of discussions submitted by the Forest Service reveals that the shortcomings concerning the accessibility and location of the 301 Main Street site specifically were taken into consideration by the evaluation team, which also considered that it is within one of the acceptable zones identified by the agency, adjacent to the office facility used by the Forest Service for 20 years, and directly across the street from the existing warehouse and service center. As to the deficiencies noted in Wiggin-Torgerson's building design, they were reasonably related to the criteria set forth in the appropriate evaluation factors. Finally, in a negotiated procurement, there is no requirement that award be made on the basis of lowest cost unless the RFP so specifies. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Here, if Mountain States' BAFO had, in fact, been technically compliant as submitted, the agency appears to have made a reasonable cost-technical trade-off, in accordance with the established evaluation factors.

Because the agency, on this record, did not have a reasonable basis for its evaluation of the awardee's proposal, we sustain the protest. We recommend that the Forest Service reopen discussions with all offerors in the competitive range and obtain another round of BAFOs, properly evaluate them in accordance with RFP requirements, and terminate Mountain

States' contract in the event that a different proposal is selected for award. We also find that Wiggin-Torgerson is entitled to the costs of filing and pursuing this protest. 4 C.F.R. § 21.6(d)(1) (1990).

The protest is sustained.

for 
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